

AMENDED IN SENATE APRIL 5, 2006

SENATE BILL

No. 1387

Introduced by Senator Poochigian

February 21, 2006

An act to amend Section 530.5 of, and to add Sections 540, 541, and 1203.051 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as amended, Poochigian. Personal identifying information.

Existing law defines personal identifying information and provides that every person who willfully obtains personal identifying information about another person, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both. Existing law also provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined, of another person, is guilty of a crime punishable by imprisonment in the county jail not exceeding one year, a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill would specify that, for purposes of these provisions, "person" includes natural persons living and deceased, and organizations, associations, business relationships and other legal entities, expand the definition of "personal identifying information" to include any identifying information that uniquely describes a person, and make other conforming changes. This bill would instead provide that every person who, with intent to defraud, acquires, retains

possession of, sells, transfers, or conveys, the personal information of another is punishable, based upon the number of persons from whom personal identifying information was taken, by fine; *and* imprisonment in a county jail; *or* imprisonment in the state prison; ~~or by both fine and imprisonment~~, as specified.

Because this bill would expand the definition of existing crimes and create new crimes, this bill would impose a state-mandated local program.

This bill would provide that every person convicted of a felony violation of, or conspiracy to violate, these provisions is punishable by an additional 2-year term of imprisonment in the state prison for each prior felony conviction of, or conviction of conspiracy to violate, specified provisions. This bill would also provide that every person who commits a felony violation of these provisions with respect the personal identifying information of a person who is less than 18 years of age, is an elder or dependent adult, or who is a person engaged in services in the uniformed services, is punishable by an additional one year term of imprisonment in the state prison.

Because this bill would increase the prosecutorial duties of local officials, this bill would create a state-mandated local program.

Existing law establishes a program of financial and technical assistance for law enforcement and district attorneys' offices, designated the High Technology Theft Apprehension and Prosecution Program.

This bill would provide that in addition to any other fine, restitution fine, or other restitution, a forensic computer analysis fee of \$250 shall be paid by persons convicted of specified offenses and any person ordered by the court to do so if the court finds that the person committed a high-technology related offense primarily through the use of a computer. This bill would also provide that county treasurers shall maintain forensic computer analysis funds into which these fines shall be deposited to be used, less administrative costs, to fund costs incurred by computer forensic analysis, equipment, and education and training.

Existing law provides that probation shall not be granted nor shall the execution or imposition of sentence be suspended for persons who have committed specified violations of law.

This bill would provide that probation shall not be granted nor shall the execution or imposition of sentence be suspended for a person who has been convicted of a felony violation of provisions relating to

personal identifying information if he or she has a prior felony conviction for a violation of those provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 530.5 of the Penal Code is amended to*
2 *read:*

3 530.5. (a) Every person who willfully obtains personal
4 identifying information, as defined in subdivision (b) of Section
5 540, of another person, and uses that information for any
6 unlawful purpose, including to obtain, or attempt to obtain,
7 credit, goods, services, *real property*, or medical information ~~in~~
8 ~~the name of the other person~~ without the consent of that person,
9 is guilty of a public offense, and upon conviction therefor, shall
10 be punished either by imprisonment in a county jail not to exceed
11 one year, a fine not to exceed one thousand dollars (\$1,000), or
12 both that imprisonment and fine, or by imprisonment in the state
13 prison, a fine not to exceed ten thousand dollars (\$10,000), or
14 both that imprisonment and fine.

15 ~~(b) "Personal identifying information," as used in this section,~~
16 ~~means the name, address, telephone number, health insurance~~
17 ~~identification number, taxpayer identification number, school~~
18 ~~identification number, state or federal driver's license number, or~~
19 ~~identification number, social security number, place of~~
20 ~~employment, employee identification number, mother's maiden~~
21 ~~name, demand deposit account number, savings account number,~~
22 ~~checking account number, PIN (personal identification number)~~
23 ~~or password, alien registration number, government passport~~
24 ~~number, date of birth, unique biometric data including~~
25 ~~fingerprint, facial scan identifiers, voiceprint, retina or iris image,~~
26 ~~or other unique physical representation, unique electronic data~~
27 ~~including identification number, address, or routing code,~~

~~telecommunication identifying information or access device,
information contained in a birth or death certificate, or credit card
number of a person, or an equivalent form of identification.~~

~~(e)~~

(b) In any case in which a person willfully obtains personal identifying information of another person, uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

~~(d)~~

(c) Every person who, with the intent to defraud, acquires, transfers, conveys, or retains possession of the personal identifying information, as defined in subdivision (b), of another person is guilty of a public offense, and upon conviction therefor, shall be punished ~~by~~ *as follows*:

(1) *If the personal identifying information is from fewer than 10 persons, by a fine not to exceed one thousand dollars (\$1,000) for each person and, imprisonment in a county jail not to exceed one year, or a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine or imprisonment in the state prison for 16 months, or two or three years.*

(2) *If the personal identifying information is from at least 10 persons, but fewer than 50 persons, by a fine not to exceed one thousand dollars (\$1,000) for each person and imprisonment in the state prison for 16 months, or two or three years.*

(3) *If the personal identifying information is from at least 50 persons, but fewer than 500 persons, by a fine not to exceed one thousand dollars (\$1,000) for each person and imprisonment in the state prison for two, three, or five years.*

(4) *If the personal identifying information is from 500 or more persons, by a fine not to exceed one thousand dollars (\$1,000) for each person and imprisonment in the state prison for three, five, or seven years.*

(d) Every person convicted of a felony violation of, or conspiracy to violate, this section shall receive, in addition to any other punishment authorized by law, including Section 667.5, a full, separate, and consecutive term of imprisonment in the state prison for two years for each prior conviction of a felony violation of this section or Section 470, 470a, 470b, 472, 484e,

1 484f, 484g, 484i, 487, 496, 529, 530.55, or 532, including any
2 conviction for conspiracy to violate the listed sections. It is not
3 required that the prior conviction resulted in a term of
4 imprisonment.

5 (e) Every person who commits a felony violation of this section
6 shall receive, in addition to any other punishment authorized by
7 law, a full, separate, and consecutive term of imprisonment in the
8 state prison for one year for each violation, if either of the
9 following circumstances apply:

10 (1) The crime was committed against a person under 18 years
11 of age or an elder or dependent adult, as defined in subdivisions
12 (g) and (h) of Section 368, and the victim's age was known or
13 should have been known to the person.

14 (2) The crime was committed against a person engaged in the
15 uniformed services, as defined in subdivision (c) of Section
16 28000 of the Education Code, and the victim's service was
17 known or should have been known to the person.

18 (f) The enhancements provided in this section shall be pleaded
19 and proven as provided by law.

20 (g) A prior conviction from another jurisdiction for an offense
21 that, if committed in California would be an offense under this
22 section, shall qualify as a prior conviction for the purposes of
23 applying the sentence enhancements provided by this section.

24 (h) Notwithstanding any other provisions of law, nothing shall
25 prohibit a person who believes that he or she possesses personal
26 identifying information as defined in Section 540, that has been
27 unlawfully used by another, from disclosing the personal
28 identifying information and related records when:

29 (1) The disclosure is necessary to report to law enforcement
30 the commission of a crime.

31 (2) The disclosure is required by law enforcement for the
32 purpose of investigating a violation of this chapter.

33 (3) The disclosure is requested by a victim.

34 (i) Nothing in this section shall require disclosure of personal
35 identifying information in accordance with subdivision (h). No
36 disclosure pursuant to subdivision (h) shall affect any existing
37 civil immunity provision as provided for in Section 47 of the Civil
38 Code or any other provision of law.

39 ~~(e) Every person who, with the intent to defraud, acquires,~~
40 ~~transfers, or retains possession of the personal identifying~~

1 information, as defined in subdivision (b), of another person who
2 is deployed to a location outside of the state is guilty of a public
3 offense, and upon conviction therefor, shall be punished by
4 imprisonment in a county jail not to exceed one year, or a fine
5 not to exceed one thousand five hundred dollars (\$1,500), or by
6 both that imprisonment and fine.

7 (f) For purposes of this section, “deployed” means that the
8 person has been ordered to serve temporary military duty during
9 a period when a presidential executive order specifies that the
10 United States is engaged in combat or homeland defense and he
11 or she is either a member of the armed forces, or is a member of
12 the armed forces reserve or the National Guard, who has been
13 called to active duty or active service. It does not include
14 temporary duty for the sole purpose of training or processing or a
15 permanent change of station.

16 (g) For purposes of this section, “person” means a natural
17 person, firm, association, organization, partnership, business
18 trust, company, corporation, limited liability company, or public
19 entity.

20 SECTION 1. Section 530.5 of the Penal Code is amended to
21 read:

22 530.5. (a) Every person who willfully obtains personal
23 identifying information, as defined in subdivision (b) of Section
24 540, of another person, and uses that information for any
25 unlawful purpose, including to obtain, or attempt to obtain,
26 credit, goods, services, real property, or medical information
27 without the consent of that person, is guilty of a public offense,
28 and upon conviction therefor, shall be punished either by
29 imprisonment in a county jail not to exceed one year, a fine not
30 to exceed one thousand dollars (\$1,000), or both that
31 imprisonment and fine, or by imprisonment in the state prison, a
32 fine not to exceed ten thousand dollars (\$10,000), or both that
33 imprisonment and fine.

34 (b) In any case in which a person willfully obtains personal
35 identifying information of another person, uses that information
36 to commit a crime in addition to a violation of subdivision (a),
37 and is convicted of that crime, the court records shall reflect that
38 the person whose identity was falsely used to commit the crime
39 did not commit the crime.

1 ~~(e) Every person who, with the intent to defraud, acquires,~~
2 ~~sells, transfers, conveys, or retains possession of the personal~~
3 ~~identifying information, as defined in subdivision (b), of another~~
4 ~~person is guilty of a public offense, and upon conviction therefor,~~
5 ~~shall be punished as follows:~~

6 ~~(1) If the personal identifying information is from fewer than~~
7 ~~10 persons, by imprisonment in a county jail not to exceed one~~
8 ~~year, or by imprisonment in the state prison for 16 months, or~~
9 ~~two or three years, and a fine not to exceed one thousand dollars~~
10 ~~(\$1,000) for each person.~~

11 ~~(2) If the personal identifying information is from at least 10~~
12 ~~persons, but fewer than 50 persons, imprisonment in the state~~
13 ~~prison for 16 months, or two or three years, and a fine not to~~
14 ~~exceed one thousand dollars (\$1,000) for each person.~~

15 ~~(3) If the personal identifying information is from at least 50~~
16 ~~persons, but fewer than 500 persons, imprisonment in the state~~
17 ~~prison for two, three, or five years, and a fine not to exceed one~~
18 ~~thousand dollars (\$1,000) for each person.~~

19 ~~(4) If the personal identifying information is from 500 or more~~
20 ~~persons, imprisonment in the state prison for three, five, or seven~~
21 ~~years, and a fine not to exceed one thousand dollars (\$1,000) for~~
22 ~~each person.~~

23 ~~(d) Every person convicted of a felony violation of, or~~
24 ~~conspiracy to violate, this section shall receive, in addition to any~~
25 ~~other punishment authorized by law, including Section 667.5, a~~
26 ~~full, separate, and consecutive term of imprisonment in the state~~
27 ~~prison for two years for each prior conviction of a felony~~
28 ~~violation of this section or Section 470, 470a, 470b, 472, 484e,~~
29 ~~484f, 484g, 484i, 487, 496, 529, 530.55, or 532, including any~~
30 ~~conviction for conspiracy to violate the listed sections. It is not~~
31 ~~required that the prior conviction resulted in a term of~~
32 ~~imprisonment.~~

33 ~~(e) Every person who commits a felony violation of this~~
34 ~~section shall receive, in addition to any other punishment~~
35 ~~authorized by law, a full, separate, and consecutive term of~~
36 ~~imprisonment in the state prison for one year for each violation,~~
37 ~~if either of the following circumstances apply:~~

38 ~~(1) The crime was committed against a person under 18 years~~
39 ~~of age or an elder or dependent adult, as defined in subdivisions~~

~~(g) and (h) of Section 368, and the victim's age was known or should have been known to the person.~~

~~(2) The crime was committed against a person engaged in the uniformed services, as defined in subdivision (c) of Section 28000 of the Education Code, and the victim's service was known or should have been known to the person.~~

~~(f) The enhancements provided in this section shall be pleaded and proven as provided by law.~~

~~(g) A prior conviction from another jurisdiction for an offense that, if committed in California would be an offense under this section, shall qualify as a prior conviction for the purposes of applying the sentence enhancements provided by this section.~~

~~(h) Notwithstanding any other provisions of law, nothing shall prohibit a person who believes that he or she possesses personal identifying information as defined in Section 540, that has been unlawfully used by another, from disclosing the personal identifying information and related records when:~~

~~(1) The disclosure is necessary to report to law enforcement the commission of a crime.~~

~~(2) The disclosure is required by law enforcement for the purpose of investigating a violation of this chapter.~~

~~(3) The disclosure is requested by a victim.~~

~~(i) Nothing in this section shall require disclosure of personal identifying information in accordance with subdivision (h). No disclosure pursuant to subdivision (h) shall affect any existing civil immunity provision as provided for in Section 47 of the Civil Code or any other provision of law.~~

SEC. 2. Section 540 is added to the Penal Code, to read:

540. (a) For purposes of this chapter, "person" means a natural person, living or deceased, firm, association, organization, partnership, business trust, company, corporation, limited liability company, or public entity, or any other legal entity.

(b) For purposes of this chapter, "personal identifying information" means either of the following:

(1) Any name or number that may be used alone, or in conjunction with any other information, to identify a specific individual person, by name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or

1 identification number, social security number, place of
2 employment, employee identification number, professional or
3 occupational number, mother's maiden name, demand deposit
4 account number, savings account number, checking account
5 number, PIN (personal identification number) or password, alien
6 registration number, government passport number, date of birth,
7 unique biometric data including fingerprint, facial scan
8 identifiers, voice print, retina or iris image, or other unique
9 physical representation, unique electronic data including
10 information identification number assigned to the person, address
11 or routing code, telecommunication identifying information or
12 access device, information contained in a birth or death
13 certificate, or credit card number of an individual person.

14 (2) Any other identifying information that uniquely describes
15 a person.

16 SEC. 3. Section 541 is added to the Penal Code, to read:

17 541. (a) In addition to any other fine, restitution fine, or other
18 restitution, the following persons shall be required to pay a
19 forensic computer laboratory analysis fee in the amount of two
20 hundred and fifty dollars (\$250):

21 (1) Every person who is convicted of a violation of Section
22 484e, 484f, 484g, 484i, 487, 496, 529, 530.5, 530.55, or 532.

23 (2) Any person ordered by any court for any offense not
24 included specifically in this section if the court finds at the time
25 of conviction or sentencing that the person committed a
26 high-technology related offense primarily through the use of a
27 computer. The court shall state on the record the reasons for its
28 findings and the reasons for requiring the laboratory fee.

29 (b) The county treasurer shall maintain a forensic computer
30 analysis fund. The sum of two hundred fifty dollars (\$250) shall
31 be deposited into the fund for every conviction listed in
32 subdivision (a) of this section. The county may retain an amount
33 of this money equal to its administrative cost incurred pursuant to
34 this section not to exceed 5 percent. Moneys in the forensic
35 computer analysis fund shall be used exclusively to fund:

36 (1) Costs incurred by forensic laboratories providing computer
37 forensic analysis or other analysis of electronic or computer
38 evidence in connection with criminal investigations conducted
39 with both the incorporated and unincorporated portions of the
40 county.

1 (2) The purchase and maintenance of equipment for use by
2 these laboratories in performing the analysis.

3 (3) Continuing education, training, and development of
4 computer forensic analysis for analysis regularly employed by
5 these laboratories.

6 Moneys in the forensic computer analysis fund shall be in
7 addition to any allocations pursuant to existing law.

8 (c) As used in this section, “forensic laboratory” means a
9 laboratory operated by or under contract with a city, county, or
10 other public agency, including a forensic laboratory of the
11 Department of Justice.

12 SEC. 4. Section 1203.051 is added to the Penal Code, to read:

13 1203.051. (a) Except in unusual cases in which the interests
14 of justice would be best served if the person is granted probation,
15 probation shall not be granted to any person convicted of a felony
16 violation of Section 530.5 who has one or more previous felony
17 convictions for a violation of that section.

18 (b) If probation is granted, the court shall specify on the record
19 and shall enter in the minutes the circumstances indicating that
20 the interests of justice would be best served by the disposition.

21 SEC. 5. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the
26 penalty for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition of a
28 crime within the meaning of Section 6 of Article XIII B of the
29 California Constitution.